

Group 2 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two times the number of tons of the source's excess emissions.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23204, Apr. 30, 2021]

**§ 97.825 Compliance with CSAPR NO<sub>x</sub> Ozone Season Group 2 assurance provisions.**

(a) *Availability for deduction.* CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances are available to be deducted for compliance with the CSAPR NO<sub>x</sub> Ozone Season Group 2 assurance provisions for a control period in a given year by the owners and operators of a group of one or more base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources and units in a State (and Indian country within the borders of such State) only if the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances:

(1) Were allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year; and

(2) Are held in the assurance account, established by the Administrator for such owners and operators of such group of base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources and units in such State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, as of the deadline established in paragraph (b)(4) of this section.

(b) *Deductions for compliance.* The Administrator will deduct CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances available under paragraph (a) of this section for compliance with the CSAPR NO<sub>x</sub> Ozone Season Group 2 assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total NO<sub>x</sub> emissions from all base CSAPR NO<sub>x</sub> Ozone Season Group 2 units at base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources in the State (and Indian country within the borders of such State) during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total NO<sub>x</sub> emissions exceed the State assurance level as described in § 97.806(c)(2)(iii); and

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total NO<sub>x</sub> emissions exceed the respective State assurance levels for such control period—

(A) Calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources and units in such State (and such Indian country), the common designated representative's share of the total NO<sub>x</sub> emissions from all base CSAPR NO<sub>x</sub> Ozone Season Group 2 units at base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.806(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the NO<sub>x</sub> emissions from each base CSAPR NO<sub>x</sub> Ozone Season Group 2 source in each such State (and Indian country within the borders of such State).

(2) The Administrator will provide an opportunity for submission of objections to the calculations referenced by

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each notice of data availability required in paragraph (b)(1)(ii) of this section.

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.806(c)(2)(iii), §§ 97.806(b) and 97.830 through 97.835, the definitions of “common designated representative”, “common designated representative’s assurance level”, and “common designated representative’s share” in § 97.802, and the calculation formula in § 97.806(c)(2)(i).

(ii) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(i) of this section.

(3) For any State (and Indian country within the borders of such State) referenced in each notice of data availability required in paragraph (b)(2)(ii) of this section as having base CSAPR NO<sub>x</sub> Ozone Season Group 2 units with total NO<sub>x</sub> emissions exceeding the State assurance level for a control period in a given year, the Administrator will establish one assurance account for each set of owners and operators referenced, in the notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources and units in the State (and Indian country within the borders of such State) having a common designated representative for such control period and as being required to hold CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) of this section, the owners and operators described in paragraph (b)(3) of this sec-

tion shall hold in the assurance account established for them and for the appropriate base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources, base CSAPR NO<sub>x</sub> Ozone Season Group 2 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances, available for deduction under paragraph (a) of this section, equal to the amount such owners and operators are required to hold with regard to such sources, units and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in such notice.

(ii) Notwithstanding the allowance-holding deadline specified in paragraph (b)(4)(i) of this section, if November 1 is not a business day, then such allowance-holding deadline shall be midnight of the first business day thereafter.

(5) After November 1 (or the date described in paragraph (b)(4)(ii) of this section) immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) of this section and after the recordation, in accordance with § 97.823, of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance transfers submitted by midnight of such date, the Administrator will determine whether the owners and operators described in paragraph (b)(3) of this section hold, in the assurance account for the appropriate base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources, base CSAPR NO<sub>x</sub> Ozone Season Group 2 units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources, units, and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(ii) of this section.

(6) Notwithstanding any other provision of this subpart and any revision, made by or submitted to the Administrator after the promulgation of the notice of data availability required in

paragraph (b)(2)(ii) of this section for a control period in a given year, of any data used in making the calculations referenced in such notice, the amounts of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances that the owners and operators are required to hold in accordance with § 97.806(c)(2)(i) for such control period shall continue to be such amounts as calculated by the Administrator and referenced in such notice required in paragraph (b)(2)(ii) of this section, except as follows:

(i) If any such data are revised by the Administrator as a result of a decision in or settlement of litigation concerning such data on appeal under part 78 of this chapter of such notice, or on appeal under section 307 of the Clean Air Act of a decision rendered under part 78 of this chapter on appeal of such notice, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.806(c)(2)(i) for such control period with regard to the base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources, base CSAPR NO<sub>x</sub> Ozone Season Group 2 units, and State (and Indian country within the borders of such State) involved, provided that such litigation under part 78 of this chapter, or the proceeding under part 78 of this chapter that resulted in the decision appealed in such litigation under section 307 of the Clean Air Act, was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraphs (b)(6)(i) of this section, the amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances that the owners and operators are required to hold for such control period with regard to the base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources, base CSAPR NO<sub>x</sub> Ozone Season Group 2 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances that the owners and operators are required to hold increases as a result of the use

of all such revised data, the Administrator will establish a new, reasonable deadline on which the owners and operators shall hold the additional amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances in the assurance account established by the Administrator for the appropriate base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources, base CSAPR NO<sub>x</sub> Ozone Season Group 2 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section. The owners' and operators' failure to hold such additional amount, as required, before the new deadline shall not be a violation of the Clean Air Act. The owners' and operators' failure to hold such additional amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance that the owners and operators fail to hold as required as of the new deadline, and each day in such control period, shall be a separate violation of the Clean Air Act.

(B) For the owners and operators for which the amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances required to be held decreases as a result of the use of all such revised data, the Administrator will record, in all accounts from which CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate base CSAPR NO<sub>x</sub> Ozone Season Group 2 sources, base CSAPR NO<sub>x</sub> Ozone Season Group 2 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, a total amount of the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances held in such assurance account equal to the amount of the decrease. If CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances were transferred to such assurance account from more than one account, the amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances transferred to such assurance account for such control period from such transferor account.

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(C) Each CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR NO<sub>x</sub> Ozone Season Group 2 assurance provisions for such control period must be a CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance allocated for a control period in a year before or the year immediately following, or in the same year as, the year of such control period.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23205, Apr. 30, 2021]

### § 97.826 Banking and conversion.

(a) A CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance is deducted or transferred under § 97.811(c) or (d), § 97.823, § 97.824, § 97.825, § 97.827, or § 97.828 or paragraph (c) or (d) of this section.

(c) At any time after the allowance transfer deadline for the last control period for which a State NO<sub>x</sub> Ozone Season Group 2 trading budget is set forth in § 97.810(a) for a given State and after completion of the procedures under paragraphs (d)(1) and (2) of this section, the Administrator may record a transfer of any CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

(d) Notwithstanding any other provision of this subpart, part 52 of this

chapter, or any SIP revision approved under § 52.38(b)(8) or (9) of this chapter:

(1) By August 13, 2021, the Administrator will temporarily suspend acceptance of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions:

(i) The Administrator will determine each of the following values:

(A) The total amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances allocated for the control periods in 2017 through 2020 attributable to the States listed in § 52.38(b)(2)(iv) of this chapter (and Indian country within the borders of such States), computed as the sum of the State NO<sub>x</sub> Ozone Season Group 2 trading budgets under § 97.810(a) for such States for all such control periods plus the product of 1.5 multiplied by the sum of the variability limits under § 97.810(b) for such States for the control period in 2017.

(B) The total tons of NO<sub>x</sub> emissions reported in accordance with §§ 97.806(b) and 97.830 through 97.835 for all CSAPR NO<sub>x</sub> Ozone Season Group 2 units at CSAPR NO<sub>x</sub> Ozone Season Group 2 sources in the States listed in § 52.38(b)(2)(iv) of this chapter (and Indian country within the borders of such States) for the control periods in 2017 through 2020.

(C) The full-season CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance bank target, computed as the sum for all States listed in § 52.38(b)(2)(v) of this chapter of the variability limits under § 97.1010(b) for such States for the control period in 2022.

(D) A conversion factor, computed as the quotient, rounded down to the nearest whole number, of the remainder of the total amount of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances determined under paragraph (d)(1)(i)(A) of this section minus the total tons of NO<sub>x</sub> emissions determined under paragraph (d)(1)(i)(B) of this section divided by the full-season CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(C) of this section.

(E) The adjusted CSAPR NO<sub>x</sub> Ozone Season Group 3 allowance bank target, computed as the product, rounded to